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LANCER WILSON
CLERK
BY [Signature] DEPUTY

8 UNITED STATES DISTRICT COURT
9 DISTRICT OF NEVADA

10 UNITED STATES OF AMERICA,

CV-N-73-128-ECR

11 Plaintiff,

IN EQUITY NO. C-125;
SUBFILE NO. C-125-C

12 WALKER RIVER PAIUTE TRIBE,

13 Plaintiff-Intervenor,

14 v.

15 WALKER RIVER IRRIGATION
16 DISTRICT, a corporation, et al.,

O R D E R

17 Defendants.
_____/

18 On June 29, 1998, Proposed Intervenor Mineral County
19 filed its Amended Motion to Dismiss Certain Parties (#222) (the
20 "Motion"). The Walker River Irrigation District ("WRID") filed its
21 Response (#225) to the Motion on July 17, 1998. Although Mineral
22 County did not file a reply in support of its Motion, it did file
23 two other documents that are relevant to the Motion: "Supplemental
24 Affidavits in Support of Motion to Publish" (#230), filed September
25 21, 1998; and the Affidavit of Lisa M. Cannizzaro (the "Cannizzaro
26 Affidavit"), attached to the "Affidavit of Treva J. Hearne" (#233),

1 filed October 21, 1998. The first of these documents (#230)
 2 includes two separate affidavits of Kelvin Buchanan, a volunteer
 3 who has been leading Mineral County's efforts to effect service of
 4 process. We shall refer to these two Buchanan affidavits as
 5 "Affidavit A" and "Affidavit B," with Affidavit A being the first
 6 of the two documents in the order in which they are attached to
 7 document #230 in the Court file, and consisting of 5 pages, and
 8 Affidavit B being the second of the two, and consisting of 16
 9 pages.

10 Also, the Motion--or rather, the list of defendants
 11 sought to be dismissed by the Motion--was amended three times
 12 subsequent to the filing of the Motion. The most recent amendment
 13 was filed on November 16, 1998, as an attachment to Mineral
 14 County's "Response to Ex Parte Application to Vacate Schedule for
 15 Filing Responses to Mineral County's Motion to Intervene" (#239).
 16 With each list, defendants appear and disappear seemingly at
 17 random. Nonetheless, we will assume that Mineral County had good
 18 reason to amend its list, and we will therefore consider the most
 19 recent list to be the complete list of persons as to whom Mineral
 20 County seeks dismissal. Accordingly, we will examine whether
 21 dismissal is warranted for the following defendants (spellings are
 22 per the 11/16/98 list):

- 23 1. Aiazzi, Anastasia
- 24 2. Aiazzi, James
- 25 3. Aiazzi, James K.
- 26 4. Aiazzi, Reno
5. Baker, Cherie
6. Baker, Steven
7. Baker, Virginia
8. Beagle, Billy Roy

9. Beagle, Thelma G.
10. Bitler, Peggy, as individual
11. Bliss Trust, U D T
12. Bryan, Maggie, as individual
13. Bryan, Vernon, as individual
14. Chounet, Jill
15. Chounet, William
16. Costa, Norma, as individual
17. Dye Family Trust
18. Georgi, Baldo, Trustee
19. Hanifan, Janet
20. Hayes, Deborah A.
21. Hayes, Jonathan C.
22. Hunniwell, Harvey E.
23. Lyon Ranch Operation, Inc.
24. Mackenzie, Andrew
25. Marriott, Carlis N.
26. McColloch, Pamela
27. McColloch, Robert L.
28. Menisini, Grace
29. Mortimore, Craig A.
30. Pellegrini, Violet
31. Smith, Cary
32. Smith, Mary
33. Snook, Jean
34. Stevens, Lynn
35. Stevens, Ronald
36. Tholke, Rachel
37. Traitel, David S.
38. Webb, Linda K.
39. Webb, Robert K.
40. Wright, Glenora F.

We have also considered documents filed in connection with the original "Motion to Dismiss Certain Parties and Amended Notice in Lieu" (#198), filed by Mineral County on May 18, 1998. WRID filed its Response (#211) to the first motion to dismiss on June 4, 1998, and the State of Nevada filed its Response (#212) on June 8, 1998. Instead of filing a reply in support of its first motion, Mineral County filed its amended motion (#222), under consideration herein, which superseded the first motion. In addition, we have considered several other documents as well: Mineral County's "Report of Service," attached to the Motion for

1 Order of Publication (Third Request) (#226), filed on August 4,
2 1998 (the "Service Report"); Exhibit B to WRID's Response to
3 Motion for Publication and Pre-Hearing Report of the Walker River
4 Irrigation District (#189), filed April 28, 1998 ("Exhibit B");
5 and the Notice in Lieu of Summons issued January 12, 1998 (no #)
6 (the "Notice in Lieu").

7 Before moving on to discuss the merits of dismissal as to
8 each individual defendant, it is important to note that none of the
9 documents submitted by any of the parties in connection with either
10 the first motion or the amended motion contain much legal analysis.
11 Normally, it is true that a plaintiff exercises a fair degree of
12 control over what entities or individuals are named as defendants
13 in a case. In many respects, Mineral County is in the position of
14 a plaintiff--it has been required to serve all defendants with
15 notice of its claims. However, we cannot allow Mineral County
16 complete freedom here to determine who the proper defendants are or
17 should be. This case is essentially an action in rem to quiet
18 title to property--that property being the water (or rather, the
19 right to take the water) of the Walker River and its tributaries.
20 Minute Order of April 1, 1997 (#99). Without all the owners of the
21 property properly joined in the case as defendants, any
22 reallocation of water rights that might result from the case could
23 be subject to future attack. Order of June 4, 1998 (#210). Thus
24 we have not dismissed any defendant from the case solely on Mineral
25 County's representations that that defendant has no water rights.
26 As to certain defendants, dismissal is appropriate; as to others,

1 it is not. We have set forth our findings as to each defendant
2 below.

3 **Individual Defendants**

4 The **Aiazzi** family - In its Motion, Mineral County seeks
5 to dismiss "James K. Aiazzi," "Reno Aiazzi," and "James and
6 Anastasia Aiazzi." The Notice in Lieu lists several Aiazzis,
7 including individuals not at issue here. The relevant defendants
8 listed in the Notice in Lieu are: "Aiazzi Ranches"; "James K.
9 Aiazzi Trust"; "Reno George Aiazzi Trust"; "Reno Aiazzi"; and
10 "James & Anastasia Aiazzi." The Motion states that neither "James
11 K. Aiazzi," "Reno Aiazzi," nor "James and Anastasia Aiazzi" own
12 water rights as individuals, but that "Aiazzi Ranches" does. The
13 Service Report indicates that there is only one trust, not two.
14 Affidavit A states: "James K. Aiazzi has been served as Aiazzi
15 Ranches. Reno George Aiazzi has been served as Trustee of the Reno
16 George and James K. Aiazzi Trust. WRID does not show him as an
17 individual holder of water rights. Mr. Aiazzi claims his water
18 right as Aiazzi Ranches. Mr. Aiazzi has been personally served.
19 Per a telephone conversation with Mr. James K. Aiazzi, on September
20 16, 1998, at approximately 3:30 p.m., Mr. Aiazzi confirmed that the
21 water rights are held as Aiazzi Ranches or as James K. and Reno
22 George Aiazzi Trust, not in the individual names of James K., Reno
23 George, or Anastasia." As set forth in Exhibit A to WRID's
24 Response (#225) to the Motion, filed July 17, 1998 ("Exhibit A"),
25 WRID's records apparently show that the James K. Aiazzi Trust and
26 the Reno George Aiazzi Trust own water rights. Also, WRID's

1 records show that "Reno Aiazzi" and "James Aiazzi" both "hold[]
2 water rights in connection with Aiazzi Ranches." Exhibit B
3 indicates that the James K. Aiazzi Trust and the Reno George Aiazzi
4 Trust are cotenants. Thus it appears that both Aiazzi Ranches and
5 the Trust (or Trusts) are proper defendants, but that the
6 individuals are not. Whether there is one trust or two is
7 irrelevant at this point; we have not been asked to rule on the
8 issue, although it may become important in determining whether the
9 Trust or Trusts have been properly served. The only issue that is
10 before us at the moment is whether the individual defendants should
11 be dismissed from the case, and it appears that they should. It
12 appears that neither "James K. Aiazzi," "Reno Aiazzi," nor "James
13 & Anastasia Aiazzi" own water rights as individuals. However, it
14 appears that both James Aiazzi and Reno George Aiazzi are trustees,
15 either each of his own eponymous trust or both of the one, joint
16 trust. See Service Report. Thus while it is appropriate to
17 dismiss these defendants as individuals, they should, as trustees,
18 be named as defendants. THEREFORE, THE MOTION TO DISMISS IS
19 GRANTED AS TO DEFENDANTS JAMES K. AIAZZI, RENO AIAZZI, AND JAMES &
20 ANASTASIA AIAZZI, IN THEIR INDIVIDUAL CAPACITY; HOWEVER, JAMES
21 AIAZZI, TRUSTEE, AND RENO GEORGE AIAZZI, TRUSTEE, SHOULD BE
22 SUBSTITUTED AS DEFENDANTS IN THEIR PLACE.

23 **Baker, Cherie, Steven, and Virginia** - The Service Report
24 states that the Bakers no longer have a water right, and indicates
25 that the right was sold to "Bothelo [sic]." Affidavit A states:
26 "Virginia, Steven and Cherie Baker sold their water rights to

1 Bothello [sic] on May 29, 1997, according to WRID records."
2 Exhibit A indicates that WRID's records do not show any of the
3 Bakers as an "owner of land with appurtenant water rights."
4 Further, the Service Report indicates that William D. and Jacquelyn
5 J. Botelho purchased their water right from the Bakers on May 29,
6 1997. Since everyone seems to agree that the Bakers no longer own
7 a water right, and since the successors to the right the Bakers
8 once owned are already named as defendants, then the Bakers should
9 be dismissed from the case. THEREFORE, THE MOTION TO DISMISS IS
10 GRANTED AS TO DEFENDANTS CHERIE, STEVEN, AND VIRGINIA BAKER.

11 **Beagle, Billy Roy and Thelma G.** - Affidavit A states:
12 "Billy Roy and Thelma G. Beagle have no water rights. WRID listed
13 them for information only. The conveyance from Massini's to the
14 Beagles reserved water rights. Lawrence Massini has been
15 personally served." Exhibit A indicates that WRID's records do not
16 show either of the Beagles as an "owner of land with appurtenant
17 water rights." The Cannizzaro Affidavit, however, which is the
18 most recent of all these documents, states: "On this day I spoke
19 with Billy Roy Beagle of Yerington, Nevada, and verified that he
20 holds water rights in Walker River. I verified his physical
21 address as 140 Highway 208." Thus while Mineral County and WRID
22 appear to agree that the Beagles have no water rights, the Beagles
23 themselves seem to have other ideas. One would tend to think that
24 Billy Roy Beagle would be the most accurate source of information
25 regarding whether Billy Roy Beagle owns water rights. Absent some
26 really persuasive evidence to the contrary, we cannot disregard his

1 recent confirmation that he does own water rights. As for Thelma,
2 although it is possible that she alone sold her rights while Billy
3 Roy kept his, the more likely scenario is that if one Beagle still
4 owns water rights, then both Beagles still own water rights. If
5 contrary information exists, then Mineral County should feel free
6 to submit it in support of a renewed motion to dismiss. Without
7 such evidence, however, the better course of action is to assume
8 that the Beagles do own water rights, and do belong in the case.
9 THEREFORE, THE MOTION TO DISMISS IS DENIED, WITHOUT PREJUDICE, AS
10 TO DEFENDANTS BILLY ROY AND THELMA G. BEAGLE.

11 **Bitler, Peggy** - The Notice in Lieu lists the following
12 Bitler defendants: "Bitler, Kenneth P."; "Kenneth Bitler & Peggy
13 L. Bitler, Trustees"; "Bitler Family Trust"; and "Bitler, Peggy."
14 The Motion seeks to dismiss Peggy Bitler as an individual
15 defendant. The Service Report states: "Listed only as a co-
16 trustee on Bitler Trust, not as an individual. Incorrect listing
17 by WRID and Mineral Co." Affidavit A states: "Peggy Bitler holds
18 no individual water right. A telephone conversation with Kenneth
19 Bitler, her husband[,], on September 18, 1998 at 4:15 p.m. confirmed
20 that all water rights held by the Bitlers are held in the Bitler
21 Family Trust." Exhibit A, however, shows that "WRID's records
22 indicate Peggy Bitler holds water rights as co-tenant with Wilbert
23 Aiazzi, Laurie Coutts & Troy Coutts." Given that the parties are
24 not in agreement on this point, we cannot grant the motion to
25 dismiss at this time. Most likely, it is the Trust that is a
26 cotenant with Wilbert Aiazzi, Laurie Coutts, and Troy Coutts, and

1 not Peggy Bitler herself (assuming this information is correct),
2 but we need more information to so hold. THEREFORE, THE MOTION TO
3 DISMISS IS DENIED, WITHOUT PREJUDICE, AS TO DEFENDANT PEGGY BITLER.

4 **Bliss Trust, U D T** - The Notice in Lieu does not list a
5 Bliss Trust in any form. Nor does any other document that we have
6 seen. The Notice in Lieu does list "Maurice & Agnes C. Bliss" as
7 defendants, along with the "John Hargus & Adah Blinn Trust," but no
8 Bliss Trust. Thus it does not appear that there is, or ever has
9 been, a defendant with this name. Since the Bliss Trust is not a
10 defendant, there is no need to dismiss it from the case.
11 THEREFORE, THE MOTION TO DISMISS IS DENIED.

12 **Bryan, Vernon and Maggie** - The Notice in Lieu lists as
13 defendants "Vernon F. Bryan, Inc." and "Brown, Vernon & Maggie
14 Bryan." The Service Report indicates that there is no "Vernon &
15 Maggie Brown," but rather a "Vernon & Maggie Bryan," and that all
16 water rights are held by Vernon F. Bryan, Inc., rather than Vernon
17 or Maggie Bryan individually. Exhibit A shows that "WRID's records
18 indicate water right holder is Vernon F. Bryan, Inc." It thus
19 appears that everyone's records agree that the proper defendant is
20 Vernon F. Bryan, Inc., and not the individual defendants.
21 THEREFORE, THE MOTION TO DISMISS IS GRANTED AS TO THE DEFENDANTS
22 LISTED IN THE NOTICE IN LIEU AS "BROWN, VERNON & MAGGIE BRYAN."

23 **Chounet, William and Jill** - The Service Report states
24 simply: "No water right. On dismissal list." Affidavit A states:
25 "William and Jill Chounet [sic] have no water rights. This was
26 confirmed and reconfirmed by records of WRID." Exhibit A indicates

1 that WRID's records do not show either of the Chounets as an "owner
2 of land with appurtenant water rights." Since everyone's records
3 appear to agree, there seems little reason to keep these defendants
4 in the case. As noted above, however, it would be quite
5 unfortunate for this case to go forward without all necessary
6 parties joined. Thus we will dismiss these defendants with the
7 understanding that, should any party to this case discover at any
8 point new information suggesting that the Chounets do own water
9 rights after all, that fact will be brought to our attention
10 immediately. THEREFORE, THE MOTION TO DISMISS IS GRANTED AS TO
11 DEFENDANTS WILLIAM AND JILL CHOUNET.

12 **Costa, Norma** - We have found no indication of why Mineral
13 County seeks to dismiss this defendant. From Exhibit B, it appears
14 that she has already been served. It also appears that she has
15 some connection with defendant Annett Ranch. It is possible that
16 Mineral County has determined that all water rights are held by
17 Annett Ranch, and not by Norma Costa, but that is pure speculation
18 at this point and certainly not a basis for dismissal. Since we
19 have been presented with no reason for holding that this defendant
20 does not have water rights, it makes no sense to dismiss her--
21 especially since it appears that she has already been served.
22 THEREFORE, THE MOTION TO DISMISS IS DENIED, WITHOUT PREJUDICE, AS
23 TO DEFENDANT NORMA COSTA.

24 **Dye Family Trust** - The Service Report states simply: "To
25 be dismissed. No water right." Affidavit A states: "Dye Family
26 Trust sold its water rights to Desert Pearl Farms. WRID records

1 confirm this statement and this is reconfirmed by Fred Rodriguez
2 who owns Desert Pearl Farms with whom I personally spoke when I
3 served him for Desert Pearl Farms." Exhibit A indicates that
4 WRID's records do not show this defendant as an "owner of land with
5 appurtenant water rights." Since everyone's records appear to
6 agree, there seems little reason to keep this defendant in the
7 case. As noted above, however, it would be quite unfortunate for
8 this case to go forward without all necessary parties joined. Thus
9 we will dismiss this defendant with the understanding that, should
10 any party to this case discover at any point new information
11 suggesting that the Dye Family Trust does own water rights after
12 all, that fact will be brought to our attention immediately.
13 THEREFORE, THE MOTION TO DISMISS IS GRANTED AS TO DEFENDANT DYE
14 FAMILY TRUST.

15 **Georgi, Baldo, Trustee** - The Notice in Lieu lists the
16 "Baldo Giorgi Trust" as a defendant, but does not list Baldo Giorgi
17 as a trustee. In fact, it is not clear from the Notice in Lieu
18 whether any trustee is listed for this trust. Of the "Giorgi,
19 Baldo Trust," the Service Report states: "On dismissal list. No
20 water right." Thus it is unclear whether Mineral County wants to
21 dismiss the Trust, or its Trustee. Affidavit A states: "Giorgi
22 Baldo Trust no longer appears as a water rights holder. This is
23 confirmed and reconfirmed by records of WRID." Exhibit A indicates
24 that WRID's records do not show the Giorgi, Baldo Trust as an
25 "owner of land with appurtenant water rights." Since everyone's
26 records appear to agree that the Baldo Giorgi Trust does not own

1 water rights, there seems little reason to keep this defendant in
2 the case. And if the Trust is dismissed, there is no need for any
3 trustees of the trust to be named as defendants. As noted above,
4 however, it would be quite unfortunate for this case to go forward
5 without all necessary parties joined. Thus we will dismiss this
6 defendant with the understanding that, should any party to this
7 case discover at any point new information suggesting that the
8 Giorgi Baldo Trust does own water rights after all, that fact will
9 be brought to our attention immediately. THEREFORE, THE MOTION TO
10 DISMISS, TO THE EXTENT IT SEEKS TO DISMISS DEFENDANT BALDO GIORGI
11 TRUST, IS GRANTED.

12 **Hanifan, Janet** - The Service Report states simply: "On
13 dismissal list. No water right." Affidavit A states: "Janet
14 Hanifan no longer appears as a water rights holder. This is
15 confirmed and reconfirmed by records of WRID." Exhibit A shows
16 that "WRID's records indicate water rights held by Philip Hanifan
17 only." Since everyone's records appear to agree that Janet Hanifan
18 does not own water rights, there seems little reason to keep this
19 defendant in the case. As noted above, however, it would be quite
20 unfortunate for this case to go forward without all necessary
21 parties joined. Thus we will dismiss this defendant with the
22 understanding that, should any party to this case discover at any
23 point new information suggesting that Janet Hanifan does own water
24 rights after all, that fact will be brought to our attention
25 immediately. THEREFORE, THE MOTION TO DISMISS IS GRANTED AS TO
26 DEFENDANT JANET HANIFAN.

1 **Hayes, Jonathan C. and Deborah A.** - Affidavit A states:

2 "Jonathan C. and Deborah A. Hayes purchased property from the
3 Jacobsens. The Jacobsens reserved the water rights for themselves.
4 The Jacobsens have all been served." The Cannizzaro Affidavit,
5 however, which is the most recent of all the relevant documents,
6 states: "On this day I spoke with Deborah Hayes of Wellington,
7 Nevada, and verified that she and her husband Jonathan C. Hayes of
8 Wellington, Nevada hold water rights in Walker River. I verified
9 that they purchased the Jacobsen water rights. I verified their
10 physical address as 254 Lower Colony Rd." Exhibit A shows that
11 "WRID's records indicate Jonathan & Debra [sic] Hayes acquired
12 water rights on 02/11/98." Thus it appears that both WRID's
13 records and the defendants themselves disagree with Mineral
14 County's contention that they have no water rights. Mineral County
15 could conceivably be correct, but under the circumstances we cannot
16 dismiss these defendants based solely on Mineral County's
17 representations. THEREFORE, THE MOTION TO DISMISS IS DENIED AS TO
18 DEFENDANTS JONATHAN C. AND DEBORAH A. HAYES, WITHOUT PREJUDICE.

19 **Hunniwell, Harvey E.** - First, we note that this
20 defendant's name should be spelled "Hunewill," not "Hunniwell." Of
21 Harvey E. Hunewill, the Service Report states: "On dismissal list
22 for decease." Exhibit A simply states "Deceased." We also note
23 that this defendant was included in the motion for publication
24 which we recently addressed. In our order (#252), filed on
25 February 25, 1998, we explained that the heirs of a deceased
26 defendant should be substituted in place of the deceased, Fed. R.

1 Civ. P. 25(a), and that Mineral County was required to show that it
2 had exercised due diligence to determine who those heirs were.
3 N.R.S. § 14.040(1). When the heirs are known, they can be
4 substituted in, and the deceased defendant can be dismissed from
5 the case. When the heirs are unascertainable even after due
6 diligence, the deceased defendant should remain in the case, and
7 the unknown heirs should be served by publication. However, as we
8 explained in our recent order, Mineral County has not yet shown
9 that it either knows who this defendant's heirs are, or has, after
10 the exercise of due diligence, been unable to ascertain who those
11 heirs are. Until one of those results has been demonstrated, we
12 cannot dismiss this defendant from the case or order service by
13 publication on his unknown heirs. THEREFORE, THE MOTION TO DISMISS
14 IS DENIED, WITHOUT PREJUDICE, AS TO DEFENDANT HARVEY E. HUNEWILL.

15 **Lyon Ranch Operation, Inc.** - Affidavit A states: "Lyon
16 Ranch Operation is not a corporation listed in Nevada. It is not
17 listed in the telephone book in Lyon County. It is not listed as
18 a water rights holder in the Walker River. This is confirmed and
19 reconfirmed by WRID's records." Exhibit A indicates that WRID's
20 records do not show Lyon Ranch Operations [sic], Inc. as an "owner
21 of land with appurtenant water rights." Since everyone's records
22 appear to agree, there seems little reason to keep this defendant
23 in the case. As noted above, however, it would be quite
24 unfortunate for this case to go forward without all necessary
25 parties joined. Thus we will dismiss this defendant with the
26 understanding that, should any party to this case discover at any

1 point new information suggesting that Lyon Ranch Operation, Inc.,
2 does own water rights after all, that fact will be brought to our
3 attention immediately. THEREFORE, THE MOTION TO DISMISS IS GRANTED
4 AS TO DEFENDANT LYON RANCH OPERATION.

5 **Mackenzie, Andrew** - Affidavit A states: "Andrew
6 MacKenzie is not listed as a water rights holder. This was
7 confirmed and reconfirmed by WRID's records." Exhibit A indicates
8 that WRID's records do not show Andrew Mackenzie as an "owner of
9 land with appurtenant water rights." Since everyone's records
10 appear to agree that Andrew Mackenzie does not own water rights,
11 there seems little reason to keep this defendant in the case. As
12 noted above, however, it would be quite unfortunate for this case
13 to go forward without all necessary parties joined. Thus we will
14 dismiss this defendant with the understanding that, should any
15 party to this case discover at any point new information suggesting
16 that Andrew Mackenzie does own water rights after all, that fact
17 will be brought to our attention immediately. THEREFORE, THE
18 MOTION TO DISMISS IS GRANTED AS TO DEFENDANT ANDREW MACKENZIE.

19 **Marriott, Carlis N.** - The Service Report states simply:
20 "On dismissal list. No water right." Affidavit A states: "Carlis
21 N. Marriott is not listed as a water rights holder. This was
22 confirmed and reconfirmed by WRID's records." Exhibit A indicates
23 that WRID's records do not show Carlis N. Marriott as an "owner of
24 land with appurtenant water rights." Since everyone's records
25 appear to agree that Carlis Marriott does not own water rights,
26 there seems little reason to keep this defendant in the case. As

1 noted above, however, it would be quite unfortunate for this case
2 to go forward without all necessary parties joined. Thus we will
3 dismiss this defendant with the understanding that, should any
4 party to this case discover at any point new information suggesting
5 that Carlis Marriott does own water rights after all, that fact
6 will be brought to our attention immediately. THEREFORE, THE
7 MOTION TO DISMISS IS GRANTED AS TO DEFENDANT CARLIS MARRIOTT.

8 **McColloch, Robert L. and Pamela** - The Service Report
9 states simply: "On dismissal list. No water right." Affidavit A
10 states: "Robert C. and Pamela McColloch conveyed their water
11 rights in the Walker River to Lee A. and Cheryl McCoy. WRID's
12 records confirm and reconfirm this information." Exhibit A
13 indicates that WRID's records do not show either of the McCollochs
14 as an "owner of land with appurtenant water rights." Since
15 everyone's records appear to agree, there seems little reason to
16 keep these defendants in the case. As noted above, however, it
17 would be quite unfortunate for this case to go forward without all
18 necessary parties joined. Thus we will dismiss these defendants
19 with the understanding that, should any party to this case discover
20 at any point new information suggesting that the McCollochs do own
21 water rights after all, that fact will be brought to our attention
22 immediately. THEREFORE, THE MOTION TO DISMISS IS GRANTED AS TO
23 DEFENDANTS ROBERT L. AND PAMELA MCCOLLOCH.

24 **Menisini, Grace** - First, we note that this defendant's
25 name should be spelled "Menesini," not "Menisini." Second, we have
26 found no indication of why Mineral County seeks to dismiss this

1 defendant. On the list attached to the Motion itself, Grace
2 Menesini is not included--but Lucinda Menesini is, and is
3 reportedly deceased. It is possible that Mineral County
4 inadvertently replaced Lucinda's name with Grace's in amending the
5 list, but we cannot make that assumption. In Exhibit B, Grace
6 Menesini is listed by WRID, and there is no indication that she
7 does not belong on that list, although throughout Exhibit B WRID
8 has stated "Not on WRID's list" for defendants that are not
9 included on WRID's list of water rights holders. Since it appears
10 that Grace may have been placed on the dismissal list in error, we
11 will not dismiss her from the case at this point. THEREFORE, THE
12 MOTION TO DISMISS IS DENIED, WITHOUT PREJUDICE, AS TO DEFENDANT
13 GRACE MENESINI.

14 **Mortimore, Craig A.** - The Service Report states: "No
15 individual listed as having a water right. Mineral County error.
16 On dismissal list." Affidavit A states: "Craig A. Mortimore is
17 not listed as an individual water rights holder. Craig Mortimore
18 works for the Nevada Division of Wildlife. WRID's records confirm
19 and reconfirm this information." Exhibit A indicates that WRID's
20 records do not show Craig A. Mortimore as an "owner of land with
21 appurtenant water rights." Since everyone's records appear to
22 agree that Craig Mortimore does not own water rights, there seems
23 little reason to keep this defendant in the case. As noted above,
24 however, it would be quite unfortunate for this case to go forward
25 without all necessary parties joined. Thus we will dismiss this
26 defendant with the understanding that, should any party to this

1 case discover at any point new information suggesting that Craig
2 Mortimore does own water rights after all, that fact will be
3 brought to our attention immediately. THEREFORE, THE MOTION TO
4 DISMISS IS GRANTED AS TO DEFENDANT CRAIG A. MORTIMORE.

5 **Pellegrini, Violet** - The Service Report states simply:
6 "On dismissal list. Deceased." Exhibit A simply states:
7 "Deceased." We note, however, that this defendant was also listed
8 on the motion for publication which we recently addressed. In our
9 order (#252), filed on February 25, 1998, we explained that the
10 heirs of a deceased defendant should be substituted in place of the
11 deceased, Fed. R. Civ. P. 25(a), and that Mineral County was
12 required to show that it had exercised due diligence to determine
13 who those heirs were. N.R.S. § 14.040(1). When the heirs are
14 known, they can be substituted in, and the deceased defendant can
15 be dismissed from the case. When the heirs are unascertainable
16 even after due diligence, the deceased defendant should remain in
17 the case, and the unknown heirs should be served by publication.
18 However, as we explained in our recent order, Mineral County has
19 not yet shown that it either knows who this defendant's heirs are,
20 or has, after the exercise of due diligence, been unable to
21 ascertain who those heirs are. Until one of those results has been
22 demonstrated, we cannot dismiss this defendant from the case or
23 order service by publication on her unknown heirs. THEREFORE, THE
24 MOTION TO DISMISS IS DENIED, WITHOUT PREJUDICE, AS TO DEFENDANT
25 VIOLET PELLEGRINI.
26

1 **Smith, Cary** - The Service Report states simply: "On
2 dismissal list. No water right." Affidavit A states: "Cary Smith
3 is not listed as a water rights holder. This was confirmed and
4 reconfirmed by WRID's records." Exhibit A indicates that WRID's
5 records do not show Cary Smith as an "owner of land with
6 appurtenant water rights." Since everyone's records appear to
7 agree that Cary Smith does not own water rights, there seems little
8 reason to keep this defendant in the case. As noted above,
9 however, it would be quite unfortunate for this case to go forward
10 without all necessary parties joined. Thus we will dismiss this
11 defendant with the understanding that, should any party to this
12 case discover at any point new information suggesting that Cary
13 Smith does own water rights after all, that fact will be brought to
14 our attention immediately. THEREFORE, THE MOTION TO DISMISS IS
15 GRANTED AS TO DEFENDANT CARY SMITH.

16 **Smith, Mary** - First, we note that there are actually two
17 Mary Smiths listed on the Notice in Lieu. The Notice in Lieu lists
18 "Smith, Keith A., Kathy & Mary" and "Smith, Ermon W. & Mary Lee."
19 It would appear that Mineral County wishes to dismiss "Mary Smith"
20 rather than "Mary Lee Smith," but that is not clear. The Service
21 Report states simply: "On dismissal list. No water right."
22 Affidavit A states: "Mary Smith is not listed as a water rights
23 holder. This was confirmed and reconfirmed by WRID's records."
24 Although it is not clear whether this is relevant, the Cannizzaro
25 Affidavit states: "On this day I attempted to call Mary Lee Smith
26 of Yerington, Nevada, but was unsuccessful." Exhibit A indicates

1 that WRID's records do not show Mary Smith as an "owner of land
2 with appurtenant water rights." Although it thus appears that A
3 Mary Smith should be dismissed, we cannot assume which Mary Smith
4 it should be. THEREFORE, THE MOTION TO DISMISS IS DENIED, WITHOUT
5 PREJUDICE, AS TO THIS DEFENDANT.

6 **Snook, Jean** - The Service Report states: "On dismissal
7 list. No water right." Affidavit A states: "There is no record
8 of an individual by the name of Jean Snook as a water rights
9 holder. WRID's records confirm and reconfirm this." Exhibit A
10 shows that "WRID's records indicate she does not hold water rights
11 individually but she is a co-[t]rustee of the C.W. & V.B. Twombly
12 Trust and the trust holds water rights." Thus it appears that Jean
13 Snook should be dismissed as an individual defendant, but that Jean
14 Snook, Trustee of the C.W. & V.B. Twombly Trust, should remain in
15 the case. We note that, with the Twombly Trust, the Twombly
16 Trustees are listed as defendants, including one Jean T. Snock
17 [sic]. As WRID notes in Exhibit B, this is clearly a misprint, and
18 should read "Snook." THEREFORE, THE MOTION TO DISMISS IS GRANTED
19 AS TO DEFENDANT JEAN SNOOK, AS AN INDIVIDUAL.

20 **Stevens, Ronald and Lynn** - Exhibit A indicates that
21 WRID's records do not show either of the Stevens as an "owner of
22 land with appurtenant water rights." Mineral County, however,
23 provides us with no information regarding why it seeks to dismiss
24 this couple. Since Mineral County has asked us to dismiss these
25 defendants, though, and since WRID's information indicates that
26 they do not own water rights, there seems little reason to keep

1 these defendants in the case. As noted above, however, it would be
2 quite unfortunate for this case to go forward without all necessary
3 parties joined. Thus we will dismiss these defendants with the
4 understanding that, should any party to this case discover at any
5 point new information suggesting that either of the Stevens does
6 own water rights after all, that fact will be brought to our
7 attention immediately. THEREFORE, THE MOTION TO DISMISS IS GRANTED
8 AS TO DEFENDANTS RONALD AND LYNN STEVENS.

9 **Tholke, Rachel** - The Service Report states: "Was listed
10 as an individual in error. Should only be listed as a trust. On
11 dismissal list." Affidavit A states: "There are no water rights
12 held in the name of Rachel Tholke. The water right is held in the
13 name of Rachel Tholke Trust. WRID's records confirm and reconfirm
14 this." Exhibit A shows that the "U.S. Board's records indicate
15 that the Rachel Tholke Trust holds water rights." Thus it appears
16 that the proper defendant is the Rachel Tholke Trust, not Rachel
17 Tholke the individual. THEREFORE, THE MOTION TO DISMISS IS GRANTED
18 AS TO DEFENDANT RACHEL THOLKE, AS AN INDIVIDUAL. The Rachel Tholke
19 Trust, and its Trustee, Don Cook, shall remain in the case as
20 defendants.

21 **Traitel, David S.** - The Service Report states: "Had no
22 individual water right. Was listed as President of Pinenut Ranch.
23 Now not listed. Should not be on list. Error. Dismissal list."
24 Affidavit A states: "There are no water rights held in the name of
25 David Traitel. The water right is held in the name of Pinenut
26 Ranch. David S. Traitel was Ranch Manager or President and listed

1 on Pinenut Ranch. According to the Secretary of the State of
2 Nevada, the President is now Ugo Giorgi and the Registered Agent is
3 Corporate Trust Company." Exhibit A shows that "WRID's records
4 indicate he is affiliated with Pinenut Ranch Corporation and the
5 corporation holds water rights." Since everyone's records appear
6 to agree that Pinenut Ranch owns water rights, but that David
7 Traitel, as an individual, does not, there seems little reason to
8 keep this defendant in the case, regardless of whether Mr. Traitel
9 is still Ranch manager or President of defendant Pinenut Ranch.
10 THEREFORE, THE MOTION TO DISMISS IS GRANTED AS TO DEFENDANT DAVID
11 S. TRAITEL.

12 **Webb, Linda K. and Robert K.** - First, we note that
13 Robert's middle initial is "D." and not "K." The Service Report
14 states simply: "On dismissal list. No water rights." Affidavit
15 A states: "Robert D. and Linda K. Webb purchased the Beagle
16 property but the water rights were still reserved. This is
17 confirmed and reconfirmed by WRID's records." Exhibit A indicates
18 that WRID's records do not show either of the Webbs as an "owner of
19 land with appurtenant water rights." Everyone's records appear to
20 agree that these defendants do not own water rights. However, the
21 Webbs purchased the Beagle property, and the status of the Beagles'
22 rights is unclear--thus the status of the Webbs' rights must be
23 unclear as well. Without more information, then, we cannot hold
24 that the Webbs own no water rights. THEREFORE, THE MOTION TO
25 DISMISS IS DENIED, WITHOUT PREJUDICE, AS TO DEFENDANTS LINDA K. AND
26 ROBERT D. WEBB.

1 **Wright, Glenora F.** - The Service Report states: "Only
 2 listed as trustee under Vivian Fulstone Trust. Should not be
 3 listed as individual water rights holder. Served under trust."
 4 Exhibit A shows that "WRID's records indicate she holds water
 5 rights as a co-tenant with the Vivian F. Fulstone Trust and James
 6 H. Fulstone." Although it seems somewhat more likely, given the
 7 information we have, that Glenora Wright would be a trustee than a
 8 cotenant, we cannot so hold based solely on Mineral County's
 9 representation to that effect. The parties are not in agreement on
 10 this point, so we need additional evidence--either proof that Ms.
 11 Wright is a trustee, or the circumstances by which Mineral County
 12 came to believe that she is a trustee, and not a cotenant.
 13 THEREFORE, THE MOTION TO DISMISS IS DENIED, WITHOUT PREJUDICE, AS
 14 TO DEFENDANT GLENORA F. WRIGHT.

15
 16 **IT IS, THEREFORE, HEREBY ORDERED** that Mineral County's
 17 amended motion to dismiss certain defendants (#222) is **GRANTED IN**
 18 **PART** and **DENIED IN PART**, as follows:

19 The motion is **DENIED, WITHOUT PREJUDICE**, as to defendants
 20 Billy Roy and Thelma G. Beagle, Peggy Bitler, the Bliss Trust,
 21 Norma Costa, Jonathan C. and Deborah A. Hayes, Harvey E. Hunewill,
 22 Grace Menesini, Violet Pellegrini, Mary Smith, Linda K. and Robert
 23 D. Webb, and Glenora F. Wright;

Edward C. Reed.
UNITED STATES DISTRICT JUDGE